

Manuscript version: Author's Accepted Manuscript

The version presented in WRAP is the author's accepted manuscript and may differ from the published version or Version of Record.

Persistent WRAP URL:

<http://wrap.warwick.ac.uk/108317>

How to cite:

Please refer to published version for the most recent bibliographic citation information. If a published version is known of, the repository item page linked to above, will contain details on accessing it.

Copyright and reuse:

The Warwick Research Archive Portal (WRAP) makes this work by researchers of the University of Warwick available open access under the following conditions.

Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Publisher's statement:

Please refer to the repository item page, publisher's statement section, for further information.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk.

Gender Equality in Law: Uncovering the Legacies of Czech State Socialism. Barbara Havelkova, Oxford and Portland, OR: Hart Publishing, 2017, pp. 337.

The value of sex/gender as analytical categories, the notions of sameness and difference, the meaning of equality, and the utility of law for achieving transformative social change have been staple themes in feminist legal scholarship. Their engagement has proven fruitful not only for uncovering law's gendered bias and contesting its role in reproducing inequality, but also for questioning the explanatory potential of various theories of law and justice, including those put forward within feminist scholarship itself.

Barbara Havelkova's recent book, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism*, explores many of these themes, while also implicitly raising questions about the utility of feminist ideas and theories developed in a particular milieu for achieving analytical and political ends elsewhere. The book's primary goal is to explain what lies behind the enduring difficulties in adopting and interpreting 'gender progressive' legislation in Czechia¹; a category in which the author places gender equality and non-discrimination law, but also other forms of regulation of particular consequence for women, including those related to paid work, family, reproductive rights and criminal justice. This broad scope – despite the book's single country focus – makes for rich reading, with Havelkova's analysis made particularly nuanced by her approach, which is at once genealogical and contextual. As she explains in the book's introduction, her particular take on genealogy entails looking to history with the view to explaining the present, which in this case involves examining the legacy of state socialism. At the same time, she is attentive to the development of legal norms and doctrines, their judicial interpretation, and policy related to women and gender more broadly, in their particular social, political and intellectual context during each of the historical intervals in question. Reflecting this multifaceted approach, the book's eight substantive chapters are divided into two parts, examining the socialist and post-socialist periods respectively, with the analysis therein organized around four themes: 1) the development of the legal regulation of women and gender, 2) the characteristics of law and rights, 3) equality and non-discrimination law guarantees and doctrine, and 4) the underlying conceptions of gender, gender order and gender inequality.

Havelkova's analysis reveals striking patterns of continuity across the different domains under consideration, while giving account also of the significant ideological and material change emanating from the post-Velvet Revolution political-economic and legal transition. One enduring feature she identifies as particularly important in shaping policy and law's approach to women across both historical intervals is the inherently determinist understanding of gender roles as grounded in biological difference. This presumption, she confirms, undergirded the socialist-state's emancipation project, which is why despite making significant strides in accommodating women's needs as mothers and workers, the state-socialist policy ultimately reified traditional gender roles because it saw them as 'natural'. Traditional assumptions about gender difference and the family have endured in the policy discourse of the post-transition era, even as gender neutrality in legal framing has been embraced, men have gained various family-related rights, and the legal definition of the family has expanded beyond its previous nuclear and heterosexual norm.

¹ Czechia changed its name from the Czech Republic in 2016. During the state-socialist period and prior to its separation from Slovakia in 1993, it was known as Czechoslovakia.

Indeed, Havelkova argues, that these recent developments are not an indication of a serious commitment to gender equality among Czech legislators, but rather have been largely driven by the need to comply with the European Union (EU) accession criteria and non-discrimination directives. Moreover, she also attributes their limited practical impact to the unreceptive legal regime, wherein rights are conceptualized narrowly (only as freedoms and negative liberties) and legal intervention or positive action is pejoratively associated with socialist-era 'social engineering'. Paradoxically, despite the clear influence of economic neoliberalism on the country's legal discourse and regime, Havelkova shows also that rights' conceptions continue to be marked by the past. For example, despite the emphasis on freedom and liberty in Czech rights' discourse, the anti-majoritarian role of rights is actually quite underdeveloped in the country's legal regime because rights which are 'unpopular' or asserted by 'unpopular' groups (be it women or the Czech Roma, for example) continue to be regarded as conditional and subject to collective interests, much as all rights were during socialism.

Havelkova attributes the limited potential of law in redressing gender inequality and discrimination also to its doctrinal development and judicial interpretation. Here too, she manages to find striking patterns of continuity, despite the fact that the Czech non-discrimination law only developed after the Velvet Revolution. As her careful doctrinal analysis reveals, contemporary Czech courts approach legal questions of equality and non-discrimination with similar formalism that characterized judicial interpretation prior to transition. As such, judges not only struggle with applying concepts of substantive equality and indirect discrimination, which require teleological reasoning and purposive approach, they even have trouble with the more straightforward formal equality analysis. According to Havelkova, this latter problem is, again, related to the very biological determinism that endures in the policy and popular discourse. She suggests judges struggle with the task of comparing women and men in a large part because they see them as inherently different and hence, not really comparable in the first place.

Havelkova's richly layered and contextualized analysis leads her to the rather damning conclusion that blindness to gender, gender order, and the prevalent denial that inequality exists, are endemic features of the popular and legal discourse in her country. Apart from the deterministic ideology and attachment to the notion of 'natural' difference, and the interrelation between anti-socialist backlash on the one hand and neo-conservatism and neoliberalism on the other, she attributes this dire state of affairs also to the failure of legal scholars to challenge the perception that legal norms are neutral. The latter, she claims, is related to the fact that critical legal scholarship, especially undertaken from an explicitly feminist perspective, remains very much underdeveloped in Czechia. Most legal scholars, she claims, approach their task of doctrinal analysis and interpretation from a perspective that presumes law's neutrality. While readers of this journal will be well aware that this problem is certainly not unique to Czechia, what is striking about the Czech case (and indeed, parallels can be found here also in other Central Eastern European [CEE] countries) is that the marginality of explicitly feminist critiques of law is very much reinforced by the hostility to feminist ideas, again, due to their association with the socialist past. This hostility is so significant, that, as Havelkova points out, even scholars or activists engaged in projects related to gender equality often underplay their feminist allegiance so as to not undermine support for their proposals. Others, she observes, have been inadvertently complacent in reinforcing the biological

determinism of the mainstream discourse by over-emphasizing that gender difference should be embraced and accommodated. It is in this context then that Havelkova raises the potential benefit of 'Western' feminist critique and experience with law reform efforts to inform Czech legal analysis, and as she suggests it is specifically 'second wave' radical feminism, albeit in an updated version, that has the most to offer. Indeed, her own book appears to take on the task of setting the example for other Czech scholars, its conceptual framing drawing heavily on 'Western', particularly Anglo-American feminist scholarship.

Notably, critical self-reflection and conceptual corrective within feminist theory and praxis have often come at the behest of those occupying 'peripheral' (geographical and/or social) locations, with one of the key early critiques leveled at 'Western' feminist scholarship being its hegemonic, universalizing tendencies and failure to speak to specificity and difference. Acknowledging this critique, Havelkova appears to nonetheless suggest that the dominance and influence of this (Western) scholarship may not have been as far reaching as we might think. In fact, one of her arguments is that her native Czechia, or more precisely the country's legal discourse and scholarship, would have benefitted from a far more extensive engagement with Western feminist ideas, especially those popularized by radical feminism. Such a conclusion may be surprising given the charges of reductionism that have been leveled at some 'second wave' feminist work, and specifically, its aptness for, and ability to address, the particular gendered realities of post-socialist transitions (see Cervonka 2008 for a good summary of this critique). And yet, Havelkova makes a thought-provoking case for why a structuralist radical feminist understanding of gender and gender inequality may be useful to redressing the latter's endurance in Czechia. In her view, going back to the past is sometimes necessary for moving forward.

I do not disagree with Havelkova that ideas and theoretical models can, with care, be usefully transplanted. I can also understand her insistence on adopting a feminist critique that helps to reveal structural bias and its material consequences for women's lives. Indeed, my own observations of the feminist theoretical engagements in Poland, a CEE jurisdiction with which I am more familiar because of my own research interests, is that a more materialist focus and structural critique have been making a comeback there, as a new generation of feminist activists started to engage with socio-economic issues. My one reservation in relation to how Havelkova frames this call for re-engaging with 'second wave' feminist ideas relates to her apparent suggestion that this sort of critique can help to rectify inconsistencies and fill the gaps between Czechia's own legal and intellectual evolution and what she deems to be the *correct* development of equality law and its critique. To be sure, her discussion of the 'reversed' order of equality law's development in Czechia, wherein substantive equality measures preceded the formal ones, and have done so with particular consequences for how non-discrimination law is understood and applied today, is a fascinating one and does help to make sense of her argument. And yet, the implicit notion that there is some particular *developmental* order that the law and its critique ought to follow, and that the blueprint for that development ought to be the trajectory of Western law and ideas, seems to sit uneasily with the importance of paying due attention to local specificities, which she does not deny are important. For example, in her introduction Havelkova notes also that the Czech land's historical positioning within the 'Germanic space' has influenced the country's legal

approach to gender, the family, and to equality law, although she does not really explore this aspect in detail leaving it for another occasion. For me, however, this latter point also begs the question of whether and how Czech feminist (legal) scholars and activists might usefully draw upon critical approaches developed in that 'Germanic space' context, as opposed to, or in addition to, the Anglo-American one.

Ultimately, I found this to be a nuanced and compelling book, which, although focused on Czechia (and Czechoslovakia), provides an important contribution to feminist legal scholarship more broadly. With its broad thematic sweep and plethora of insights, the book would be of interest to feminist scholars and students in a range of disciplines who are interested in law's role in re/producing gender norms and its potential to challenge inequality. The book confirms that despite being subject to critique even within feminist scholarship, gender remains a useful analytical category, and that notwithstanding their well demonstrated shortcomings, rights, equality and non-discrimination law are still important sites of feminist activism and critical engagement.

Ania Zbyszewska, University of Warwick School of Law, Coventry, UK.

References

Allaine Cervonka, "Traveling Feminist Thought: Difference and Transculturation in Central and Eastern European Feminism" *Signs* Summer 2008: 809-832.